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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5 SAN JOSE DIVISION
6

7 THOMAS HEATON SPITTERS,

8 Plaintiff,

9 v.

10 GARY LOEBNER,

11 Defendant.

Case No. [18-cv-02759-BLF](#)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE FOR
FAILURE TO COMPLY WITH COURT
ORDER**

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13 On September 7, 2018, the Court adopted Magistrate Judge Nathaniel Cousins' report and
14 recommendation to dismiss the case without prejudice for Plaintiff Thomas Heaton Spitters'
15 failure to (1) satisfy 28 U.S.C. § 1915(a)(1)'s requirements for proceeding in forma pauperis and
16 pay the court's filing fee; (2) provide sufficient notice of his claims in his complaint; and (3)
17 allege that the Court has subject matter jurisdiction. *See* ECF 19. The Court provided Plaintiff
18 "one final opportunity" to pay the filing fee and file an amended complaint, setting a deadline of
19 October 4, 2018. *Id.* The Court noted that "[f]ailure to comply with this order will result in
20 dismissal of this case." *Id.* The Court reminded Plaintiff of this deadline in two subsequent orders
21 on September 20, 2018 and September 26, 2018, respectively. *See* ECF 21, 24. In the September
22 20, 2018 order, the Court again admonished Plaintiff that failure to comply "will cause the case to
23 be dismissed." ECF 21. Between September 7, 2018 and September 21, 2018, Plaintiff filed two
24 letters with this Court, neither of which cured these defects. *See* ECF 20, 22.


25 The Court has considered the five factors for determining whether to dismiss a case as a
26 sanction: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to
27 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
28 disposition of cases on their merits; and (5) the availability of less drastic alternatives." *Yourish v.*

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California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (citation omitted). Each of these factors except the policy in favor of resolution of cases on the merits weighs in favor of dismissal without prejudice. As such, the Court DISMISSES WITHOUT PREJUDICE Mr. Spitters' claims.

IT IS SO ORDERED.

Dated: October 11, 2018


BETH LABSON FREEMAN
United States District Judge